U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20243138

Date: DEC. 1, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an aerospace engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the subsequent appeal, agreeing that the Petitioner met the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), but had not sufficiently established that he is well positioned to advance the proposed endeavor under the second prong. *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2] The matter is before us again on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is not a motion to reconsider the denial of the petition. Instead, it is a motion to reconsider our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's motion to reopen. Therefore, we cannot consider

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).

II. ANALYSIS

At the time of filing, the Petitioner was working part-time as a graduate research assistant while pursuing his Ph.D. in [redacted] engineering. He proposes to "work in [redacted]" and "primarily claims eligibility under *Dhanasar*'s second prong based on his graduate work with [redacted] and [redacted]"[3]

As an initial matter, we note that contrary to the Petitioner's assertion that "*Dhanasar* merely states that the Petitioner will be determined to be well positioned if he has made any progress toward achieving the proposed endeavor," we explained in our precedent decision that:

> To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

In other words, a petitioner's "progress towards achieving the proposed endeavor" is only one of the factors we consider.

The Petitioner also claims that "[i]t is stretching the plain reading of *Dhanasar* to expect every petitioner to have personally secured funding in his/her own name." However, we did not indicate any such expectation for "every petitioner." Rather, we informed the Petitioner that, despite claims to the contrary, the funding information he submitted as evidence that he is well positioned to advance his endeavor did not establish that he, as opposed to the head of his laboratory for example, was mainly responsible for obtaining, or essential or critical to receiving, the referenced funding. As we explained in *Dhanasar*, "the significance of the petitioner's research in his field *is corroborated by evidence of* peer and government interest in his research, as well as by *consistent government funding of the petitioner's research projects*," noting that "the record establishes that *the petitioner initiated or is the primary award contact on several funded grant proposals and that he is the only listed researcher on many of the grants*." (Emphasis added).

[3] [redacted] is a consortium of [redacted] servicing companies.

Research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit. However, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. In *Dhanasar*, we concluded that "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

The Petitioner also asserts that he has met the preponderance of the evidence standard,[4] but fails to establish that we improperly considered the evidence under a higher or incorrect standard.

Upon review, we affirm that our prior decision considered the submitted evidence, including the reference letters,[5] properly applied *Dhanasar*, and that it was correct, based on the evidence in the record at the time of the decision, under the preponderance of evidence standard.

In summation, the Petitioner has not established on motion that our decision was based on an incorrect application of law or policy. Because we limited our appeal decision to an analysis of the second *Dhanasar* prong, and because our conclusion on that issue is dispositive, we need not address the Petitioner's assertions on motion regarding the third prong of the *Dhanasar* framework.

III. CONCLUSION

We affirm our prior conclusion that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is dismissed.

[4] *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (BIA 2010) and *Matter of E-M-*, 20 I&N Dec. 77 (BIA 1989),

[5] While the Petitioner may disagree with our conclusions regarding the submitted reference letters, he has not established that we did not give them proper consideration.